

EDMUND G. BROWN JR., Attorney General
of the State of California
PAUL C. AMENT
Supervising Deputy Attorney General
E. A. JONES III, State Bar No. 71375
Deputy Attorney General
ELAINE GYURKO
Senior Legal Analyst
California Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, California 90013
Telephone: (213) 897-4944
Facsimile: (213) 897-9395

Attorneys for Complainant

**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation and Petition to
Revoke Probation Against:

JOHN CHARLES HUDDLESTON
2426 Riverside Drive
Los Angeles, California 90039

Respiratory Care Practitioner License No. 12514

Respondent.

Case No. D1 2006 678

**ACCUSATION AND
PETITION TO REVOKE
PROBATION**

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation and Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs (Board).

2. On or about February 14, 1989, the Board issued Respiratory Care Practitioner License Number 12514 to John Charles Huddleston (Respondent). This license was in effect at all times relevant to the charges brought herein and will expire on June 30, 2010, unless renewed.

3. In a disciplinary action entitled *In the Matter of the Accusation Against*

1 *John Charles Huddleston*, Case No. R-2100, the Board issued a decision effective March 17,
2 2008, in which Respondent's license was revoked. However, the revocation was stayed and
3 Respondent's license was placed on probation for three (3) years with certain terms and
4 conditions. A copy of that decision is attached as Exhibit A and incorporated herein by
5 reference.

6 JURISDICTION

7 4. This Accusation and Petition to Revoke Probation is brought before the
8 Board under the authority of the following laws. All section references are to the Business and
9 Professions Code (Code) unless otherwise indicated.

10 5. Section 3710 of the Code states: "The Respiratory Care Board of
11 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
12 8.3, the Respiratory Care Practice Act]."

13 6. Section 3718 of the Code states: "The board shall issue, deny, suspend,
14 and revoke licenses to practice respiratory care as provided in this chapter."

15 7. Section 3754 of the Code states: "The board may deny an application for,
16 or issue with terms and conditions, or suspend or revoke, or impose probationary conditions
17 upon, a license in any decision made after a hearing, as provided in Section 3753."

18 8. Section 3750 of the Code states:

19 "In addition to any other grounds specified in this chapter, the board may deny,
20 suspend, or revoke the license of any applicant or license holder who has done any of the
21 following:

22 " . . .

23 "(d) Conviction of a crime that substantially relates to the qualifications,
24 functions, or duties of a respiratory care practitioner. The record of conviction or a
25 certified copy thereof shall be conclusive evidence of the conviction.

26 " . . . "

27 9. Section 3750.5 of the Code states:

28 "In addition to any other grounds specified in this chapter, the board may deny,

1 suspend, or revoke the license of any applicant or license holder who has done any of the
2 following:

3 " . . .

4 "(b) Used any controlled substance as defined in Division 10 (commencing with
5 Section 11000) of the Health and Safety Code. . . ."

6 10. Section 3752 of the Code states:

7 "A plea or verdict of guilty or a conviction following a plea of nolo contendere
8 made to a charge of any offense which substantially relates to the qualifications,
9 functions, or duties of a respiratory care practitioner is deemed to be a conviction within
10 the meaning of this article. The board shall order the license suspended or revoked, or
11 may decline to issue a license, when the time for appeal has elapsed, or the judgment of
12 conviction has been affirmed on appeal or when an order granting probation is made
13 suspending the imposition of sentence, irrespective of a subsequent order under Section
14 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to
15 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
16 accusation, information, or indictment."

17 11. California Code of Regulations, Title 16, section 1399.370, states:

18 "For the purposes of denial, suspension, or revocation of a license, a crime or act
19 shall be considered to be substantially related to the qualifications, functions or duties of
20 a respiratory care practitioner if it evidences present or potential unfitness of a licensee to
21 perform the functions authorized by his or her license or in a manner inconsistent with the
22 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
23 those involving the following:

24 " . . .

25 "(c) Conviction of a crime involving driving under the influence or reckless
26 driving while under the influence.

27 ""

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1 COST RECOVERY

2 12. Section 3753.5, subdivision (a) of the Code states:

3 “In any order issued in resolution of a disciplinary proceeding before the board,
4 the board or the administrative law judge may direct any practitioner or applicant found to have
5 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
6 investigation and prosecution of the case.”

7 13. Section 3753.7 of the Code states:

8 “For purposes of the Respiratory Care Practice Act, costs of prosecution shall
9 include attorney general or other prosecuting attorney fees, expert witness fees, and other
10 administrative, filing, and service fees.”

11 14. Section 3753.1, subdivision (a) of the Code states:

12 “An administrative disciplinary decision imposing terms of probation may
13 include, among other things, a requirement that the licensee-probationer pay the monetary costs
14 associated with monitoring the probation.”

15 FIRST CAUSE TO REVOKE PROBATION

16 (Biological Fluid Testing)

17 15. At all times after the effective date of Respondent’s probation, Condition 2
18 stated:

19 Respondent, at his expense, shall participate in random testing, including, but not
20 limited to, biological fluid testing (i.e., urine, blood, saliva), breathalyzer, hair follicle
21 testing, or a drug screening program approved by the Board. Test costs range from
22 \$21.00 to \$200.00 each. The length of time shall be for the entire probation period. The
23 frequency and location of testing will be determined by the Board.

24 At all times, Respondent shall fully cooperate with the Board or any of its
25 representatives, and shall, when directed, appear for testing as requested, and submit to
26 such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs
27 or other controlled substances.

28 If Respondent is unable to provide a specimen in a reasonable amount of time

1 from the request, while at the work site, Respondent understands that any Board
2 representative may request from the supervisor, manager or director on duty to observe
3 Respondent in a manner that does not interrupt or jeopardize patient care in any manner,
4 until such time Respondent provides a specimen acceptable to the Board.

5 Failure to submit to testing or appear as requested by any Board representative for
6 testing, as directed, shall constitute a violation of probation, and shall result in the filing
7 of an accusation and/or a petition to revoke probation against Respondent's respiratory
8 care practitioner license.

9 16. Respondent's probation is subject to revocation because he failed to
10 comply with Probation Condition 2, referenced above. The facts and circumstances regarding
11 this violation are as follows:

12 A. As part of Respondent's random drug testing program, he was required to
13 call the automated telephone system at Compass Vision, Inc. (CVI) on a daily basis to determine
14 if he needed to provide a specimen for testing and analysis. Respondent failed to telephone CVI
15 on July 21, 2008, September 28, 2008, and October 14, 2008.

16 SECOND CAUSE TO REVOKE PROBATION

17 (Abstain from Use of Drugs and Alcohol)

18 17. At all times after the effective date of Respondent's probation, Condition 3
19 stated:

20 Respondent shall completely abstain from the possession or use of alcohol,
21 controlled substances, dangerous drugs, and any and all other mood altering drugs,
22 substances and their associated paraphernalia, except when the drugs are lawfully
23 prescribed by a licensed practitioner as part of a documented medical treatment.

24 Respondent shall execute a release authorizing the release of pharmacy and
25 prescribing records as well as physical and mental health medical records. Respondent
26 shall also provide information of treating physicians, counselors or any other treating
27 professionals as requested by the Board.

28 Respondent shall ensure that he is not in the presence of or in the same physical

1 location as individuals who are using illegal substances, even if Respondent is not
2 personally ingesting the drug(s).

3 Any positive result that registers over the established laboratory cutoff level shall
4 constitute a violation of probation and shall result in the filing of an accusation and/or a
5 petition to revoke probation against Respondent's respiratory care practitioner license.

6 Respondent also understands and agrees that any positive result that registers over
7 the established laboratory cutoff level shall be reported to each of Respondent's
8 employers.

9 18. Respondent's probation is subject to revocation because he failed to
10 comply with Probation Condition 3, referenced above. The facts and circumstances regarding
11 this violation are as follows:

12 A. On July 12, 2008, Respondent appeared at a collection site to provide a
13 urine specimen for testing and analysis in accordance with his probation monitoring
14 program. The laboratory report from CVI indicated that he tested positive for Ethyl
15 Glucuronide at 1300 ng/mL, indicating consumption of alcohol.

16 B. On November 3, 2008, Respondent appeared at a collection site to provide
17 a urine specimen for testing and analysis in accordance with his probation monitoring
18 program. The laboratory report from CVI indicated he tested positive at 13 ng/mL for
19 Cannabinoids,¹ which are controlled substances and mind altering drugs.

20 C. On his Quarterly Report of Compliance for the reporting period of April 1
21 through June 30, 2008, dated July 5, 2008, Respondent admitted that he consumed wine
22 four to five hours before his arrest on June 4, 2008.

23 D. On his Drug Questionnaire dated July 28, 2008, Respondent admitted that
24 he drinks communion wine at church one to two times per week.

25
26 1. Cannabinoids contain THC (delta-9-tetrahydrocannabinol), the main active chemical in
27 marijuana. Marijuana is a controlled substance under Health and Safety Code section 11054,
28 subdivision (d) (13). Marijuana (Cannabis sativa) induces psychotomimetic effects and thus is
a mood altering drug within the meaning of Probation Condition 3.

1 E. On his Drug Questionnaire dated November 12, 2008, Respondent
2 checked "Yes" that he had used illegal drugs in the last three weeks, and stated that he ate
3 brownies that were laced with marijuana on October 31, 2008. He also checked "Yes"
4 that he had consumed alcohol in the last three weeks, and stated that he drinks
5 communion wine at church.

6 THIRD CAUSE TO REVOKE PROBATION

7 (Obey All Laws)

8 19. At all times after the effective date of Respondent's probation, Condition 5
9 stated:

10 Respondent shall obey all laws, whether federal, state, or local. Respondent shall
11 also obey all regulations governing the practice of respiratory care in California.

12 Respondent shall notify the Board in writing within 14 days of any incident
13 resulting in his arrest, or charges filed against, or a citation issued against Respondent.

14 20. Respondent's probation is subject to revocation because he failed to
15 comply with Probation Condition 5, referenced above. The facts and circumstances regarding
16 this violation are as follows:

17 A. Respondent violated section 3750, subdivision (d), of the Code, and
18 California Code of Regulations, Title 16, section 1399.370, subdivision (c), in that he was
19 convicted of the crime of reckless driving involving alcohol on June 5, 2008. The facts
20 and circumstances, set forth in Paragraph 21 of this Accusation and Petition to Revoke
21 Probation, are incorporated herein by reference. Respondent failed to notify the Board of
22 his arrest within 14 days.

23 B. Respondent violated section 3750.5, subdivision (b), of the Code in that he
24 used controlled substances, specifically Cannabinoids. The facts and circumstances set
25 forth in Paragraph 18, Subparagraph B, of this Accusation and Petition to Revoke
26 Probation are incorporated herein by reference.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Conviction of a Crime)

3 21. Respondent is subject to disciplinary action under sections 3750,
4 subdivision (d), and 3752 of the Code, and California Code of Regulations, Title 16, section
5 1399.370, subdivision (c), in that he was convicted of a crime substantially related to the
6 qualifications, functions or duties of a respiratory care practitioner. The circumstances are as
7 follows:

8 A. On or about June 4, 2008, a Los Angeles police officer conducted an
9 enforcement stop after he observed Respondent make an illegal U-turn in his vehicle and
10 almost collide with another vehicle. Respondent's two minor children were passengers in
11 the vehicle. Upon contact with Respondent, the officer noticed that Respondent's eyes
12 were red and watery, there was an odor of alcohol on his breath, his speech was slurred,
13 and he staggered as he walked. Respondent admitted to the officer that he had consumed
14 beer while he was working on his house. He was unable to successfully perform the field
15 sobriety tests. He was arrested for driving under the influence of alcohol. The results of
16 Respondent's breath test indicated his blood alcohol level was .07/.08%.

17 B. On or about June 5, 2008, in Los Angeles County Superior Court
18 Complaint No. 8MP06603, Respondent was charged with driving under the influence of
19 alcohol or drugs, in violation of Vehicle Code section 23152, subdivision (a), a
20 misdemeanor (Count 1), and driving with .08% or higher blood alcohol, in violation of
21 Vehicle Code section 23152, subdivision (b), a misdemeanor (Count 2). Both Counts 1
22 and 2 have additional allegations of having a minor passenger in the vehicle at the time of
23 the offense, in violation of Vehicle Code section 23572, and with having a prior
24 conviction on March 23, 2007, for driving with .08% or higher blood alcohol. Respondent
25 was also charged with committing cruelty to a child by endangering health, in violation of
26 Penal Code section 273a, subdivision (b), a misdemeanor (Counts 3 and 4).

27 C. On or about June 5, 2008, the court amended the complaint to add the
28 charge of reckless driving involving alcohol, in violation of Vehicle Code section 23103, a

misdemeanor (Count 5). On or about June 5, 2008, Respondent was convicted upon his plea of nolo contendere to reckless driving involving alcohol. He was placed on probation for three years on a number of terms and conditions, including: pay fines and assessments of \$1,081.00 or in lieu thereof, serve 10 days in county jail (with credit for 3 days), perform 10 days of Cal Trans (with credit for 2 days) or perform 147 hours of community service; complete a licensed alcohol and drug education program; complete a one year parenting class; and comply with all standard DUI terms and conditions of probation. Counts 1 through 4 of the complaint were dismissed.

SECOND CAUSE FOR DISCIPLINE

(Use of a Controlled Substance)

22. Respondent is subject to disciplinary action under section 3750.5, subdivision (b), of the Code, in that he used controlled substances, specifically Cannabinoids. The facts and circumstances set forth in Paragraph 18, Subparagraph B, of this Accusation and Petition to Revoke Probation, are substantially related to the qualifications, functions or duties of a respiratory care practitioner, and are incorporated herein by reference.

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

4 1. Revoking the probation that was granted by the Respiratory Care Board of
5 California in Case No. R-2100;

6 2. Revoking or suspending Respiratory Care Practitioner License No. 12514
7 issued to John Charles Huddleston;

8 3. Ordering John Charles Huddleston to pay the Respiratory Care Board the
9 costs of the investigation and enforcement of this case, and if probation is continued or extended,
10 the costs of probation monitoring; and

11 4. Taking such other and further action as deemed necessary and proper.

12 DATED: December 22, 2008

13 Original signed by Liane Zimmerman for:
14 STEPHANIE NUNEZ
15 Executive Officer
16 Respiratory Care Board of California
17 Department of Consumer Affairs
18 State of California
19 Complainant
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